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BY ECF

Honorable Cathy Seibel
United States District Judge
Southern District of New York
300 Quarropas St.
White Plains, NY 10601-4150

**Re: *United States v. Jose Rivera*, 12 Cr. 169 (CS)
Jose Rivera v. United States, 16 Cv. 4983 (CS)**

Dear Judge Seibel,

I write to provide an update regarding Mr. Rivera's pending motion under 28 U.S.C. § 2255 based on *Johnson v. United States*, 135 S. Ct. 2551 (2015). This Court held Mr. Rivera's petition in abeyance pending the Second Circuit's decision whether or not to allow him to file a second or successive motion under § 2255 (which, in turn, was held in abeyance pending a series of cases including *United States v. Davis*, 139 S. Ct. 2319 (2019)). Dkt. No. 25.¹ This Court further ordered Mr. Rivera "to advise the Court within 7 days if the application to file a second/successive petition is denied, and shall file a brief within 30 days if it is granted." *Id.*

On October 1, 2020, the Circuit granted Mr. Rivera's motion for leave to file a successive petition and transferred the proceedings back to the District Court. Dkt. No. 27. The Circuit found that Mr. Rivera "has made a prima facie showing that the proposed § 2255 motion satisfies the requirements of § 2255(h)." *Id.* (citations omitted). Specifically, Mr. Rivera's motion argued "that his 18 U.S.C. § 924(c) conviction predicated on attempted Hobbs Act robbery under 18 U.S.C. § 1951 is no longer valid after *Johnson* and *Davis*." *Id.* The Circuit went on to state:

¹ The citations herein correspond to the criminal docket, 12 Cr. 169 (CS).

We note that the issue of whether attempted Hobbs Act robbery is a crime of violence under the § 924(c)(3)(A) force clause has been raised in several appeals now pending in this Court. *See, e.g., United States v. McCoy*, 2d Cir. 17-3515; *United States v. Collymore*, 2d Cir. 19-596; *United States v. Morris*, 2d Cir. 16-6. The district court can decide, in the first instance, whether its proceedings on the new § 2255 motion should be stayed pending decision in one or more of those appeals.

Thus, we write to request that the Court continue to stay the pending § 2255 motion, until the Circuit resolves the central issue in this case: whether attempted Hobbs Act robbery is a crime of violence. The Government, by Assistant United States Attorney Abigail Kurland, consents to this request.

If the Court grants this request, Mr. Rivera will file a brief within 30 days of the issuance of any such decision from the Circuit. If the Court denies this request, Mr. Rivera is prepared to file a brief by November 2, 2020.

Respectfully submitted,

/s/

Sylvie Levine
Assistant Federal Defender
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Application granted. Petitioner's brief will be due within 30 days of the Circuit's resolution of the issue whether attempted Hobbs Act robbery is a crime of violence for purposes of Section 924(c), and the Government's response will be due 30 days after Petitioner's brief is filed.

SO ORDERED.


CATHY SEIBEL, U.S.D.J.

10/9/20